

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding )

PP Docket No. 93-253

Amendment of the Commission's  
Cellular-PCS Cross-Ownership Rule )

GN Docket No. 90-314

Implementation of Sections 3(n)  
and 332 of the Communications Act  
Regulatory Treatment of Mobile  
Services )

GN Docket No. 93-252

To: The Commission

PETITION FOR RECONSIDERATION

The Sovereign Nation of the Oneida Tribe of Wisconsin ("Oneida Tribe"), by its attorneys, submit this Petition for Reconsideration ("Petition") of the Sixth Report and Order in the captioned proceedings. In support whereof the following is shown.

This Petition seeks reconsideration of the Commission's failure in its Sixth Report and Order<sup>1</sup> to address the issues surrounding its procedural processes in adopting a specific rule of eligibility affecting the Oneida Tribe's participation in the block C PCS auction. The rule at issue, that the existence of gaming revenues creates a rebuttable presumption of unfair competitive advantage in the entrepreneurs' block C PCS auctions, directly and adversely affects the Oneida Tribe's eligibility to participate in the auction, whenever finally rescheduled.

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<sup>1</sup> Sixth Report & Order, FCC 95-301, adopted July 18, 1995, released July 18, 1995, Federal Register publication, July 21, 1995.

This rule does not affect any other known potential block C applicant. For example, it does not affect the rule's apparently sole proponent, Cook Inlet Region, Inc. ("CIRI"), and actually provides CIRI with a significant advantage over the Oneida Tribe and any other Indian Tribe which may receive revenues from gaming enterprises.<sup>2</sup>

In comments submitted July 7, 1995, in response to the Further Notice of Proposed Rulemaking issued by the Commission in response to the Supreme Court's decision in Adarand, the Oneida Tribe made a compelling case that hanging the burden of a "rebuttable presumption," that gaming revenues will provide an unfair competitive advantage in the auctions, is neither defensible on any cogent economic or legal grounds, nor as sound public policy.

Indeed, the Oneida comments demonstrated that the premises on which the presumption of unfair advantage was based is contrary to fact, law and simply unfair.

In a subsequent pleading filed by the Oneida Tribe, its "Motion to Strike the 'Response of Cook Inlet Region, Inc.'" ("Motion"), the Oneida Tribe dealt with the assertions made by CIRI "to clarify the record with regard to the unusual matters raised by the Oneida Tribe." (Response @ 2). In its Motion, the Oneida Tribe pointed out that CIRI's Response had for the first time revealed, on the record in this proceeding (albeit belatedly), important facts about the origins of the sole document relied on by the Commission in adopting its restrictive role for the use of gaming revenues.

As the Motion demonstrated, searches of the Commission's official docket by Oneidas' attorneys, the Commission's records contractor and the Commission's staff, confirmed that the

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<sup>2</sup> CIRI is not restricted in any manner from using its \$600,000,000 in non-gaming assets and revenues from participating in the block C auctions.

document was never made part of the official record in this docket until filed with CIRI's Response on July 12, 1995. Left unexplained and unanswered is how and why that document came to be the foundation for the restrictive treatment given gaming revenues in the Fifth Memorandum Opinion & Order released November 23, 1994.

The Oneida Tribe will not repeat here its concerns for the issues raised about the propriety of the Commission's use and reliance on a document and whatever actions were taken that made the document the sole support for the restrictions on gaming revenues. Those issues have been adequately briefed and presented for resolution in the Oneida Tribe's Motion pending before the Commission in this proceeding. However, as the Motion and the Oneida Tribe's Comments filed herein have yet failed to produce action by the Commission to address and correct the serious procedural and substantive deficiencies surrounding the gaming revenues restriction, and to preserve the record intact, the Motion and Comments are expressly incorporated by reference herein.<sup>3</sup>

Under the pressures created by the delays in instituting the block C auctions, the Commission refused to deal directly with the Oneida Tribe's challenge to the gaming revenues restriction. Instead, in its Sixth Report & Order the Commission attempted to limit its review of how best to reschedule the block C auctions and yet avoid conflict with the holding of the Supreme Court in Adarand. That goal, while laudable, did not provide a judicious determination of the issues the Oneida Tribe's Comments and Motion have raised and did not therefore

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<sup>3</sup> The Comments of the Oneida Tribe submitted July 7th supplied ample justifications, facts, arguments and law that the restrictions on reliance on gaming revenues is unjustified and insupportable. The revelations about the sole document on which the adoption of the rule depends should have by this time resulted in its outright rescission and repudiation.

alleviate the harm done to the Oneida Tribe's ability to compete in the block C auctions which arise from the gaming revenues restrictions.

The block C auctions have once again been delayed, this time until the courts rule on the numerous contentions being made about the validity of the Sixth Report & Order's revisions to the entrepreneurs' block eligibility requirements. While this delay is most unfortunate, and is certain to continue to disadvantage the Oneida Tribe and all other block C applicants, the ability of the Commission to address and correct the injustice imposed on the Oneida Tribe and to restore the sanctity of its procedural rules is no longer impeded by the exigency of rescheduling the block C auction.

From a substantive point of view, with or without the offending document finally revealed by the July 12th filing of CIRI's Response, there remains no justification in sound policy and none whatsoever in the record of this proceeding for depriving Native Americans of eligibility to participate in such a significant economic opportunity as PCS represents because of their access to a certain type of revenue. There is likewise no public interest basis for the continuation of the regulatory stigma on gaming revenues presently contained in the Commission's rules. More to the point, consideration of all the circumstances surrounding the adoption of this stigma strongly suggests that it would be unwise and counterproductive to ignore the unjust impact continuing such artificial and arbitrary restriction would create. That stigma must be removed if the full and rightful participation of Native Americans in the entrepreneurs' Block C PCS licenses is to be assured as Congress and sound public policy dictate.

In conclusion, the Commission should reconsider its Sixth Report & Order and rescind the gaming revenues restrictions.

Respectfully submitted,  
The Sovereign Nation of the  
Oneida Tribe of Indians of Wisconsin

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\* Effective August 28, 1995

**CERTIFICATE OF SERVICE**

I, Suzanne M. Helein, hereby certify that the foregoing Petition for Reconsideration was delivered by hand to the following, on August 21, 1995:

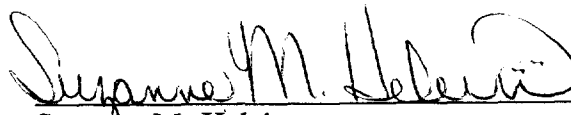
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